

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:16-00218

DON LAMONT WILKERSON

MEMORANDUM OPINION AND ORDER

Before the court is defendant's Motion to Retest Drug Evidence. ECF No. 111. The defendant seeks to require the government to deliver three quantities of alleged methamphetamine to a forensic laboratory retained by the defendant to allow for the retesting of the substances for total weight and purity. The government does not object to defendant's motion. See ECF No. 123.

Out of an abundance of caution,<sup>1</sup> this court **GRANTS** defendant's motion to the extent that it will allow the retesting of all drug quantities. The court **ORDERS** the parties to provide the court, after consultation, with a detailed joint proposed order which contains all significant details regarding the retesting including, but not limited to, (1) the parties,

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<sup>1</sup> The court recognizes that defendant's counsel - for over a year - did not appreciate the distinction between methamphetamine and actual methamphetamine for purpose of triggering the statutory minimums. Moreover the court is cognizant that this matter has already been continued eight (8) times.

manner, and method necessary for transportation, (2) the proposed testing facility and its address, (3) the method of analysis to be used, (4) the amount of alleged methamphetamine to be analyzed, and (5) how and where the residual alleged methamphetamine should be delivered. The parties must also consult with all actors involved in the transportation and retesting procedure, and within the parties joint proposed order, ensure the court the dates included below result in a meaningful trial date, which will not again be postponed. This proposed order shall be filed with the court no later than February 12, 2018.

Due to the expected four to six week delay necessary to retest the alleged methamphetamine, (see ECF No. 111 at 9), this court finds it necessary to continue this matter to preserve defendant's right to adequately prepare for trial. Accordingly, the court hereby **ORDERS** as follows:

- I. Trial of this action is continued until **Tuesday, March 27, 2018, at 9:30 a.m.**, in Charleston;
- II. Pre-trial motions are to be filed on or before **Tuesday, March 13, 2018**;
- III. A pretrial conference is scheduled for **Monday, March 26, 2018, at 2:00 p.m.**, in Charleston;
- IV. Pursuant to 18 U.S.C. § 3161(h)(7)(A), the time from the filing of defendant's motions until the trial is excludable for purposes of the Speedy Trial Act.

Given the generous nature of the extension granted herein,  
no further extensions of the deadline will be granted.

The Clerk is directed to send a copy of this Memorandum  
Opinion and Order to counsel of record, the United States  
Marshal for the Southern District of West Virginia, and the  
Probation Office of this court.

It is **SO ORDERED**, this 7th day of February, 2018.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
Senior United States District Judge